



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-166**
Hotels, motels, boarding houses, rooming houses,
resorts, summer camps, trailer camps, etc.

Date last reviewed: **June 29, 1998**

Current Reviewer: **JoAnne Gordon**

Date current review completed: **May 8, 2002**

Is this document being reviewed at this time because of a taxpayer or association request? (If "YES", provide the name of the taxpayer/association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Briefly describe the subject matter of the rule(s):

Rule 166 explains how B&O, retail sales, and use taxes apply to persons operating hotels, motels, bed and breakfast facilities, and similar facilities for transients. The rule also discusses how special taxes, such as the hotel/motel, and convention and trade center taxes apply to these businesses.

2. Related statutes, interpretive statements, court decisions, BTA decisions, and WTDs:
(Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered interpretive statements.)

| YES | NO | |
|------------|-----------|--|
| X | | Are there any statutory changes subsequent to the previous review of this rule that should be incorporated? |
| | X | Are there any interpretive statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.) |
| X | | Are there any interpretive statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.) |
| | X | Are there any Board of Tax Appeal (BTA) decisions, court decisions, or |



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|---|---|---|
| | | Attorney Generals Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule? |
| X | | Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule? |
| | X | Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive statement.) |

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

The following ETAs may be repealed as Rule 166 currently addresses the subject matter:

- **ETA 091.08.166 Lease for Purposes of Reletting**
- **ETA 378.08.166 Transient Guests Message Service Charges**

At such time as Rule 166 is revised, the following statutory changes should be incorporated:

- **Chapter 178, Laws of 2002, presumes that the furnishing of lodging for a continuous month is a rental or lease of real property and not a license to use.**

Information from the following published determinations should be incorporated when Rule 166 is revised:

- **Det. No. 99-109, 19 WTD 398 (2000) explains that with respect to the convention and trade center tax, charges for roll-a-way beds and refrigerators are subject to the convention and trade center tax. Such charges are in addition to the charge for lodging rather than incidental.**
- **Det. No. 98-075, 17 WTD 266 (1998) explains that hotel/motel tax applies to membership charges for recreational vehicle park.**
- **Det. 97-198, 17 WTD 89 (1998) explains that sales, B&O, and hotel/motel taxes applies to charges for time-share membership where the member does not acquire the attributes of ownership in the real estate.**

3. Additional information: Identify any additional issues (other than that noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

Rule 166 currently discusses the application of tax when the United States government purchases lodging. In the time since the 1994 adoption of the rule, the federal government's credit card program has changed. The credit card program used by the federal government and its employees is subject to change. In addition, other businesses, such as restaurants and car rental companies, make sales to the federal government and its employees. Thus, consideration should be given to removing discussion of the program from the rule and addressing the issue in an Excise Tax Advisory. In the event the information remains in the rule, the discussion should be expanded to include lodging purchases made by foreign missions and diplomats.



4. LISTING OF DOCUMENTS REVIEWED: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive statements, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented:

Interpretive statements (e.g., ETAs and PTAs):

- **ETA 091.08.166, Lease for Purposes of Reletting**, explains that the lease of tangible personal property to use for transient lodging is subject to sales tax as the ship was not resold or subleased in the same unit as originally leased.
- **ETA 378.08.166, Transient Guests Message Service Charges**, explains that message service charges that are added to customers' bills are included within the definition of a retail sale (RCW 82.04.050) as a charge made for the furnishing of lodging and all other services by a hotel.

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Administrative Decisions (e.g., WTDs):

- **Det. No. 99-109, 19 WTD 398 (2000)** concluded that, under the facts presented, the motel/hotel operator who contracted with a video entertainment provider for movies was not engaged in business as a subscriber television business. With respect to manager meals, it was determined that the taxpayer did not overcome the presumption that manager meals were in exchange for services and held that complementary manager meals were not different than employee meals provided under Rule 124. The determination also held that additional charges for rollaway beds and refrigerators are not incidental charges, such charges are concomitant with lodging and subject to the convention and trade center tax.
- **Det. No. 98-075, 17 WTD 266 (1998)** determined that sales of memberships in a recreational vehicle park are subject to the hotel/motel tax because such sales are charges for the rental of space to transients for parking house trailers, campers, recreational vehicles, mobile homes, tents, etc. and such parks are “open to the public.”
- **Det. 97-198, 17 WTD 89 (1998)** determined that points purchased under the taxpayer's timeshare trust arrangement represented a license to use or enjoy real estate and subject to the retailing B&O, retail sales, and hotel/motel taxes.
- **Det. No. 94-113, 15 WTD 15 (1995)** determined that transient boat moorage fees and transient airport tie-downs are not subject to the special hotel/motel tax because they are not received for the “furnishing of lodging.”

Attorney General’s Opinions (AGOs):

- **AGO 59-60 No. 94** explains that the purchase or rental of tangible personal property for use in providing lodging services is not a purchase for resale.



Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Chapter 178, Laws of 2002**
- **Special Notices**
 - **Sales Tax Exemption for Foreign Diplomats (first issued August 3, 1998, reissued April 2002) discusses the Foreign Missions Act and how it applies to purchases, including lodging, made by foreign missions and diplomats.**
 - **Important Information for Retailers Making Sales to the United States Government (issued December 14, 1998, reissued April 2002) explains the application of retail sales tax to purchases made by employees of the United States government when payment occurs under the U.S. government's credit card system.**
 - **Hospitality Industry Use Tax Reminder (issued September 26, 1996) reminds hotel and motel businesses to report and pay use tax on consumer purchases when the retail sales tax has not been paid.**

4. Review Recommendation:

- | | |
|--------------|--|
| <u> X </u> | Amend |
| _____ | Repeal (Appropriate when repeal is not conditioned upon another rule-making action.) |
| _____ | Leave as is (Appropriate even if the recommendation is to incorporate the current information into another rule.) |
| _____ | Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.) |

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

Consistent with the recommendation of the previous rule review, Rule 166 should be revised. In particular, the rule should be revised to incorporate 2002 legislation. Information from determinations published subsequent to the last review should be incorporated. In addition, the Department should consider whether information concerning sales of lodging to the federal government, its employees, foreign missions and diplomats is best addressed in the rule or in an Excise Tax Advisory.



5. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

_____ 1
_____ 2
_____ 3
_____ 4